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**IN THE  
COURT OF APPEALS OF INDIANA**

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MARIA G. SCHELM,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 02A03-0609-CV-403
	)	
WILLIAM O. SCHELM,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE ALLEN CIRCUIT COURT  
The Honorable Craig J. Bobay, Magistrate  
Cause No. 02C01-0604-PO-40

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**May 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-petitioner Maria G. Schelm (Maria) appeals from the Allen Circuit Court's (trial court) sua sponte order (Order) terminating a protective order that it had previously issued against appellant-respondent William O. Schelm (William). We rephrase Maria's argument to be whether the trial court erred by sua sponte terminating relief it had previously granted her, thereby denying her due process. Finding no error, we affirm the judgment of the trial court.

### FACTS

On April 13, 2006, Maria petitioned the Allen Superior Court (Superior Court) to issue an ex parte order for protection to protect herself and her four children from her husband, William. The Superior Court granted Maria's petition that same day and set the order to expire on April 13, 2008. Upon issuing the order, the Superior Court transferred jurisdiction to the trial court pursuant to Indiana Code section 34-26-5-6(4),<sup>1</sup> for a hearing in conjunction with the Schelms' pending dissolution action.

On May 8, 2006, the trial court held a de novo evidentiary hearing regarding Maria's petition and, that same day, granted the petition and entered an order for protection to expire on April 13, 2008. On May 30, 2006, the trial court issued various provisional orders in the

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<sup>1</sup> Indiana Code section 34-26-5-6(4) provides:

If a person who petitions for an ex parte order for protection also has a pending case involving:

- (A) the respondent; or
- (B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

Schelms' dissolution action, including a temporary restraining order (TRO) to protect Maria from William. That same day, the trial court sua sponte issued the Order:

On the 8th day of May, 2006, the Court, granted the Petitioner, Maria G. Schelm[,] an Order for Protection against the Respondent, William O. Schelm. Subsequent to the issuing of the Order, in related cause 02C01-0604-DR-298, [the dissolution proceeding,] the Court issued a Temporary Restraining Order Regarding Personal Safety in favor of Maria O. [sic] Schelm and against William O. Schelm.

In light of the Temporary Restraining Order Regarding Personal Safety entered in said Domestic Relations cause, the court, ORDERS that the previously issued Order for Protection (of May 8, 2006) is terminated forthwith.

Appellant's App. p. 5.

William filed a motion to correct error on June 21, 2006, arguing that Maria was not in need of protection.<sup>2</sup> Maria filed a motion to correct error on June 28, 2006, asking the trial court to retract the Order and reinstate the May 8 order for protection. The trial court held a hearing on August 3, 2006, and, four days later, denied Maria's motion and granted William's motion. By granting William's motion, the trial court "set aside" the May 8, 2006, order for protection, but the trial court's order had "no impact" on the TRO.<sup>3</sup> *Id.* at 30. Maria now appeals.

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<sup>2</sup> While Maria makes a separate argument that William's motion to correct error was untimely because he requested relief pertaining to the May 8 order for protection and filed the motion to correct error on June 21, 2006, William's motion to correct error requests the trial court to dismiss all protective orders—including the May 30 TRO. Therefore, William's motion to correct error was timely.

<sup>3</sup> As William notes in his brief, the trial court's decision to grant his motion to correct error and "set aside" the May 8 order for protection was redundant because the trial court's May 30 Order had already "terminated" the order for protection and the trial court specifically noted that its decision had no impact on the TRO. Appellee's Br. p. 2 (citing Appellant's App. p. 5).

## DISCUSSION AND DECISION

Maria requests that we reverse the Order terminating the prior protective order. Specifically, Maria argues that by terminating the order for protection sua sponte, the trial court denied her due process.

### I. Standard of Review and Relevant Law

Maria appeals from the trial court's denial of her motion to correct error. We review the trial court's decision to grant or deny a motion to correct error for an abuse of discretion. Gard v. Gard, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005). An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom. Id. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. Id.

The Indiana Civil Protection Order Act (ICPOA) governs orders for protection and was created to ensure the safety and protection of domestic violence victims and to prevent future domestic violence. Ind. Code § 34-26-5-1 et seq. An order for protection is effective for two years unless another date is ordered by the court. I.C. § 34-26-5-9(e). However, “[t]he fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.” I.C. § 34-26-5-1.

TROs in domestic relations cases are governed by Indiana Trial Rule 65(E) and are intended to prevent “the non-moving party from abusing, harassing, or disturbing the peace of the petitioning party or any child or step-child of the parties [and] exclude the non-moving

party from the family dwelling.” A domestic relations TRO is effective “until the entry of a decree or final order” in the dissolution proceeding “or until modified or dissolved by the court.” T.R. 65(E)(3).

## II. Effect of the Sua Sponte Order

In considering Maria’s argument that the trial court erred when it terminated its previously-issued order for protection sua sponte, we must reexamine the events preceding the trial court’s Order. Maria and William were involved in a separate dissolution proceeding pending under a different cause number before the same court. Before it issued the Order, the trial court issued a TRO in the dissolution action, which was intended to protect Maria and her children. Therefore, until the trial court issued the Order, Maria had both a TRO and an order for protection against William. When the trial court issued the Order, it specifically referenced the TRO and cited the TRO as its motivation for issuing the Order and terminating the order for protection.

As an initial matter, while we do not have the record for the dissolution proceeding, a copy of the TRO is included in the record on appeal. Appellant’s App. p. 27-29. The TRO provides that “[William] is enjoined from abusing, harassing, or disturbing the peace of the [Maria] and her family. [William] is further excluded from [Maria’s] dwelling places.” Appellant’s App. p. 28.

Maria initially argues that she receives less protection under the TRO than she did under the order for protection and cites the various expiration dates as support for her argument: the order for protection was effective until April 13, 2008, and the TRO is only

effective until a final decree is entered in the dissolution proceeding. We first note that it would be possible for the Schelms' dissolution proceeding to become final after April 13, 2008, and, under that scenario, the TRO would protect Maria past the order for protection's expiration date. Furthermore, if the trial court determines that Maria needs further protection when the dissolution becomes final, it may issue a restraining order in the Schelms' final dissolution decree. See, e.g., Thompson v. Thompson, 811 N.E.2d 888, 900 (Ind. Ct. App. 2004). Therefore, Maria's argument that she receives less protection under the TRO simply because it expires when the dissolution becomes final is unpersuasive.

Maria next argues that she receives less protection under the TRO because a TRO traditionally prohibits "the non-moving party from abusing, harassing, or disturbing the peace of the petitioning party" or their children, Ind. Trial Rule 65(E), while an order for protection ensures the safety of the victim and is intended to prevent future violence, I.C. § 34-26-5-1. As support for her argument that TROs and orders for protection are different, Maria notes that TROs are issued pursuant to Trial Rule 65(E) while orders for protection are issued pursuant to the ICPOA. However, the gravamen of Maria's argument is that "[a]n order for protection is intended to prevent future violence or [the] threat of violence, whereas a temporary restraining order only temporarily prohibits abuse, harassment and disruption of the peace." Appellant's Br. p. 9 (emphases added). While we acknowledge that a TRO and an order for protection are distinct protective measures, they are more similar than Maria admits: both are temporary and both are intended to protect the petitioner by preventing future violence. In sum, Maria has not persuaded us that she receives less protection under

the TRO than she received under the order for protection.

### III. Due Process

Turning to Maria's claim that the trial court's Order denied her due process, we first note that the trial court held two hearings in this matter: (1) a hearing on May 8, 2006, before issuing the order for protection, and (2) a hearing on August 3, 2006, regarding the parties' motions to correct error. While we acknowledge that the trial court held the August 3 hearing after it had issued the Order, Maria presented the same arguments to the trial court that she now makes to us. Nonetheless, Maria argues that "[a] hearing after the fact does not satisfy due process." Appellant's Reply Br. p. 4.

We acknowledge that the "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" McKinney v. McKinney, 820 N.E.2d 682, 688 (Ind. Ct. App. 2005) (citing Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). However, we have previously held that due process is "nevertheless flexible and calls for such procedural protections as the particular situation demands." McKinney, 820 N.E.2d at 688 (emphasis added).

While the situation here is admittedly rare, in light of our conclusion that the trial court's Order did not prejudice Maria, we cannot find that she was denied due process simply because the trial court did not hold a hearing until after it issued the Order. Indeed, Maria had an opportunity to voice her concerns about the Order to the trial court and the trial court denied her motion to correct error. Therefore, we cannot find that the trial court abused its discretion or that Maria was denied her due process.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.